



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 06178689

Date: FEB. 20, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a biotechnologist in the field of immunology, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirement of at least three of the evidentiary criteria. The Petitioner then submitted a combined motion to reopen and reconsider. Although the Director concluded that the Petitioner met the initial evidentiary requirement, he did not find that the Petitioner established the requisite national or international acclaim, and standing in the overall field, to qualify as an alien of extraordinary ability. On appeal, the Petitioner asserts that the Director did not consider the entirety of the record in his final merits determination.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner obtained his Ph.D. in life and health sciences from the [redacted] France with a specialization in immunology. The record indicates that he has performed research in the area of immunology, led research projects, and participated in and coordinated scientific workshops.¹

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner met three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to his service as a judge of the work of others, authorship of scholarly articles, and leading role for organizations having a distinguished reputation. Upon review, we agree that the record demonstrates that the Petitioner meets these three criteria. Specifically:

- The Director noted that the Petitioner has conducted peer-review activities for the University of [redacted] and the [redacted] [redacted] during his work as part of the [redacted] Project. We further note

¹ Although several reference letters indicate that the Petitioner founded a company in Venezuela, the record does not include documentary evidence regarding the company, its formation or its products or services. In addition, the Petitioner does not assert that his eligibility as an alien of extraordinary ability is founded upon acclaim in the field of business or as an entrepreneur.

that the record establishes that he served on a doctoral thesis jury at [redacted] University, and that he evaluated applications and papers for an award granted by the Ministry of the [redacted] College Education, Science and Technology;

- The Petitioner has authored several papers which have been published in scholarly journals, and;
- The Petitioner served as executive vice president of the [redacted].

On appeal, the Petitioner asserts that he also meets the evidentiary criterion relating to lesser nationally or internationally recognized awards, and that he also served in other leading or critical roles for [redacted] which should also be considered to be qualifying for purposes of the criterion at 8 C.F.R. § 204.5(h)(3)(viii). However, because he has already established that he meets the requisite three evidentiary criteria, we will consider this evidence along with the totality of the record under the final merits determination below.

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.² In this matter, we determine that the Petitioner has not shown his eligibility.

We initially note that in conducting the final merits determination in his motion decision, the Director focused only on evidence related to those criteria which he had found that the Petitioner met. As noted by the Petitioner on appeal, USCIS policy states that *all* evidence in the record be considered under the final merits determination, independent of the evidentiary criteria analysis performed previously.³ We will therefore analyze the record accordingly below.⁴

On appeal, the Petitioner submits new evidence and a brief in which he addresses the issue noted above and others. Regarding the new evidence of the Petitioner's activity as a judge of the work of others in his field, we note that this evidence postdates the filing of the petition in this matter. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec.

² *See also* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 4 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

³ *Id.*

⁴ Although we have reviewed all of the evidence in the record, including the numerous reference letters submitted, not all of the evidence is mentioned in this decision.

45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), further provides that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. We will therefore not consider this new evidence in the final merits determination.

In his appeal brief, the Petitioner stresses that the peer review work he completed for [redacted] mentioned by the Director in his motion decision, was for the government of [redacted] and thus that he has served as a judge for organizations both in and outside of his native Venezuela.⁵ However, while we acknowledge that these organizations relied on the Petitioner's expertise to evaluate the work of others, the evidence is insufficient to demonstrate that this work reflects acclaim for him on the national or international level. The certificates thanking the Petitioner for his work as an evaluator on the [redacted] "Challenge on Scientific Investigation" do not provide information such as the number of evaluators involved, whether the projects evaluated were proposed by researchers in his field, and whether the Petitioner had responsibility for the final decision regarding the projects (such as whether they were funded, received an award, etc.) Likewise, the letter from the Ministry of the [redacted] College Education, Science and Technology regarding the National Award for Best Scientific, Technological and Innovation Work" similarly lacks such information, nor does it appear elsewhere in the record.

As the Director notes in his decision, the evidence of the Petitioner's participation as a judge of the work of others does not set him apart from others performing similar duties. The Petitioner asserts that the quality of the institutions where he served as a judge should also be taken into consideration as placing him at the top of his field, and refers to evidence in the record from the website of [redacted] as well as media that mentions this institution. But this evidence does not show that [redacted] or [redacted] University are independently considered to be prestigious institutions at the national or international level. More importantly, it does not establish that the Petitioner's role as a peer reviewer and as a panelist on a single doctoral thesis committee for these institutions, respectively, are indicative of or garnered him sustained national or international acclaim.

Beyond his roles as an evaluator and reviewer for several organizations, the Director acknowledged the Petitioner's leading role as Executive Vice President of [redacted]. On appeal, the Petitioner stresses that he also performed in other important roles for [redacted], including his work in coordinating the institution's immunoproduction laboratory, and establishing the [redacted] [redacted] or [redacted]. However, we note that while his title and work as Executive Vice President is supported by a legal announcement and an office memo, the evidence regarding his other roles at [redacted] does not include documentary evidence to support the statements included in reference letters. The Petitioner refers to two reference letters, one from [redacted] of the [redacted] University of [redacted] (Argentina) and another from [redacted] of the [redacted] University of Ecuador, which describe [redacted] as having "an infrastructure of 2000 m² and an investment of US \$3,950,000.00" and note that this facility was "devoted to the [redacted] molecules useful for the development of diagnostic kits."⁶ However, neither of these writers indicates that they

[redacted] located in Ecuador, while [redacted] University is in Venezuela.

⁶ We note that other reference letters in the record include similar language, but also do not provide further detail regarding the Petitioner's role in coordinating [redacted]

worked with the Petitioner at [] and the letters do not provide detail regarding the Petitioner's duties and role with [] or the product of his efforts while in that role. In addition, we note that while the Petitioner provided some information about [] from two Venezuelan government websites, none of this material mentions [] or provides further information about its objectives or accomplishments.

A review of the materials regarding the Petitioner's work with the Venezuelan [] [] and [] provides some detail regarding his work with these organizations. The evidence indicates that he conducted research for [] as part of a study concerning Venezuela's biotechnology sector and its role in [] security, which was sponsored by the Venezuelan government. In this role, the evidence indicates that the Petitioner served as coordinator of the [] which included subprojects. However, the report on this project lists him as a member of the "[] Analysis Team," and the acknowledgments section refers to him as one of eight "advisers and researchers." While the Petitioner clearly played an important part in this research project, the evidence does not establish that he played an equally prominent role for [] overall.

Regarding the Petitioner's work at [] the evidence shows that through the [] Program conducted at [] the Petitioner served as both a researcher and teacher to aid in the development of detection methods for [] brucellosis. In addition, the evidence indicates that he participated as a lecturer at two conferences devoted to veterinary science as a part of this project, as well as at a science and technology conference and contributed to the development of a master's degree program in plant biotechnology at the institution. He also served as a peer reviewer during this time, as noted above. However, while the Petitioner appears to have played an important role in these particular projects, the evidence does not establish that during the year-long duration of his work with the [] Project at [] these roles were leading or critical for the organization overall, or that the results of these efforts led to widespread recognition in the field of immunology. We note that a reference letter from [] of the [] University of Chile, who worked with the Petitioner on the same project at [], indicates that it "produced interesting results for the Universidad de las [] [] and a ground-breaking study in Ecuador," but does not provide further details regarding its impact to [] or the broader field of immunology in Ecuador and beyond.

Turning to the publication of his research and its impact on the overall field of immunology, the Petitioner focuses on research he conducted early in his career during his doctoral studies and post-doctoral research at the []. Specifically, he refers to an article he co-authored which was published in the *Journal of Immunology* in 1998, and points to evidence of the ranking of this journal in the field of immunology. In addition, he highlights two letters initially submitted in response to the Director's request for evidence.

The first letter was the second written by [] in which he states that he first met the Petitioner in 1993 at the []. He identifies two published papers written by the Petitioner, the 1998 paper noted above and another published in the journal *Experimental Parasitology* in 1995, both focusing on a particular parasite. [] notes that in both cases, other researchers have cited to these papers in their own work, and that "this has allowed for the field to further advance." While he provides specific examples of other researchers' papers which have referenced these works,

he does not explain how this work has advanced the science of immunology, or in what way those other researchers used the Petitioner's work in their own.

Similarly, [redacted] of the [redacted] University of Venezuela also focuses on the paper published in the *Journal of Immunology*, writing that it "has been frequently cited by several authors." He further states that it "proposed numerous models which have been addressed in several undergraduate and graduate theses which directly or indirectly [the Petitioner] has been involved." [redacted] states in conclusion that "with the proper conditions [the Petitioner] would be one of the most active and productive researchers in the immunology area."

These letters state generally that the papers mentioned have been referenced by other researchers, which is supported by evidence in the record from Google Scholar showing the number of citations to the Petitioner's published work. However, this evidence does not demonstrate that the Petitioner's body of work in this area has impacted the field of immunology to the extent that it places him among those at the top of this field, as is acknowledged in [redacted] concluding statement. Further, while a reference letter from [redacted] goes into further detail about the early work done by the Petitioner which focuses on the parasite [redacted], he writes that as a result the Petitioner "has obtained recognition within his circle of immediate collaborators," as opposed to acclaim at a national or international level.

In addition, while we acknowledge that the evidence shows that the *Journal of Immunology* is a well-ranked journal in the field, we will not assume that every paper published in such a journal will necessarily have an impact on the field. Rather, we look to evidence of reaction to the paper by the scientific community. As indicated above, the Petitioner's paper which was published in this journal has been referenced by other researchers in the field on dozens of occasions, as have his papers published in other scientific journals. But the evidence does not establish that the quantity or quality of references to the Petitioner's work, or the reaction to that work as stated in the reference letters submitted, places him at the top of his field.

The Petitioner also asserts on appeal that the [redacted] Medal he received from the governor of the Venezuelan [redacted] for his work on the team responsible for attempting to recover the remains of [redacted], is comparable to the National Medal of Science in the United States. As noted by the Director, the record includes several media articles about this project, some of which mention the Petitioner or interview him. However, none of these articles mention the [redacted] Medal, thus detracting from the Petitioner's assertion regarding the stature of this award and any acclaim which he may have garnered as an awardee. Further, the evidence indicates that the medal was not intended to recognize achievement in the Petitioner's field of immunology, but rather "as a designated tribute to highlights historians, writers, journalists, plastic artists and Venezuelan musicians" who worked to preserve and disseminate knowledge regarding [redacted]. While the Petitioner's work on this project gained him some notoriety in Venezuela, as evidenced by the articles published in major newspapers in his home country, the record does not show that this led to sustained acclaim in the field of immunology.

The record demonstrates that the Petitioner was a productive researcher in the field of immunology in his early career, and later shifted his focus to the administration and management of research projects. Indeed, several of the reference letters submitted highlight his work as a manager, as well as his

participation in conferences and workshops at the international level and his founding of a Venezuelan company in the biotechnology sector. However, the evidence does not establish that the Petitioner has achieved national or international acclaim as a researcher in the field of immunology, or as a science administrator or biotechnology entrepreneur. We therefore find that he has not established eligibility as an alien of extraordinary ability.

III. CONCLUSION

The Petitioner submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria, and we therefore conducted the final merits analysis referenced in *Kazarian*, 596 F.3d at 1119-20. Upon a thorough review of the record and analysis as described above, we conclude that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought. For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.